

**HEALTH AND SENIOR SERVICES**

**DIVISION OF LONG-TERM CARE SYSTEMS**

**Standards for Licensure of Long-Term Care Facilities**

**Subacute Care Unit In An Acute Care General Hospital**

**Proposed Amendments: N.J.A.C. 8:39-47.4 and 5**

**Authorized By: \_\_\_\_\_**

**Clifton R. Lacy, M.D.**

**Commissioner, Department of Health and Senior Services**

**(with approval of the Health Care Administration Board).**

**Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.**

**Proposal Number: PRN 2004-43**

**Submit comments by April 2, 2004 to:**

**Barbara Goldman, RN, JD**

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**Long-Term Care Systems**

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The agency proposal follows:

**Summary**

The rules at N.J.A.C. 8:39-47 contain the requirements for licensure of a subacute care unit in an acute care general hospital.

N.J.A.C. 8:39-47.4(d)5 requires that the utilization review staff of a hospital-based subacute care unit conduct retrospective examinations of diagnostic and length of stay information concerning each admission to the unit. In addition, such information is required to be reported to the Department and to an Independent Utilization Review Organization (IURO) quarterly on a form, in a manner prescribed by the Department. The IURO is required to review a representative sample of all admissions to the hospital-based subacute care unit in order to verify the accuracy of the quarterly reports regarding length of stay. Each hospital incurs the cost of the services provided by the IURO.

N.J.A.C. 8:39-47.5(b) delineates the requirements for the IURO's submission of reports to the Department.

N.J.S.A. 26:2H-7.4 through 7.8, which provide the statutory authority for the rules governing hospital-based subacute care units, require the Department to develop procedures to assess the hospital-based subacute care unit's compliance with the provisions of the law. However, the law does not mandate the use of IUROs.

On April 26, 2002, the New Jersey Hospital Association (NJHA) submitted a petition to rulemake, in which the NJHA requested that the Department delete the rules that require the use of IUROs by subacute care units. The Department filed a notice of receipt of NJHA's petition, with the Office of Administrative Law. This notice was published in the New Jersey Register on June 3, 2002 (see: 34 N.J. R. 1975). Subsequently, the Department filed a notice of action on NJHA's petition to rulemake, and this notice was published in the New Jersey Register on

June 2, 2003 (see: 35 N.J.R. 2532). The Department's notice of action stated that the Department would grant the NJHA's petition to rulemake for the following reasons:

1. The Department reviews all quarterly reports for compliance with length of stay requirements;
2. The IUROs have not identified any serious issues as a result of their review;
3. The cost of the IUROs is burdensome for the hospitals with subacute care units; and
4. The Department conducts annual surveys of the hospital-based subacute care units, during which a representative sample of files is reviewed for compliance with the rules at N.J.A.C. 8:39-47 et al., including the length of stay requirements.

Based upon the reasons delineated above, the Department proposes to amend N.J.A.C. 8:39-47.4 and 5 by eliminating the language that currently exists at N.J.A.C. 8:39-47.4(d)5 regarding the use of IUROs, and by deleting N.J.A.C. 8:39-47.5(b) in its entirety. All of the other requirements of this section of the rules will remain intact. As a result of the deletion of N.J.A.C. 8:39-47.5(b), subsection (c) will be recodified as (b).

Because a 60-day comment period has been provided on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3 (a) 5.

### **Social Impact**

The proposed amendments will relieve the hospital-based subacute care units of the financial burden of employing IUROs. The amendments will have no social impact because the Department will continue to provide oversight and monitoring of subacute care units.

### **Economic Impact**

The proposed amendments will have no economic impact on the general public, as no costs are incurred or revenue generated as a result of the proposed amendment. The Department of Health and Senior Services, by regulation, is already required to have staff review the quarterly reports; therefore, no new staff will be required as a result of the proposed amendment. The proposed amendment will have a positive economic impact on hospitals with subacute care units because they will no longer incur the cost of the IUROs. Because of the small number of subacute care units throughout the State, it is not expected that there will be any economic impact upon the IUROs.

### **Federal Standards Statement**

The proposed amendments comply with Federal standards for Medicare certification pursuant to Public Law 89-97 (42 U.S.C., 1395 et. seq.).

### **Jobs Impact**

The Department does not expect that any jobs will be generated or lost as a result of these proposed amendments.

### **Agriculture Industry Impact**

The proposed amendments will not impact the agriculture industry.

## **Regulatory Flexibility Analysis**

Some hospitals with subacute care units may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The existing rules require hospital-based subacute care units to record and maintain documentation to verify that each individual who is admitted to the unit meets the admission criteria in the rules. Documentation that the aggregate length of stay of each admission is eight days or less, in accordance with the rules, is also required. The subacute care units are currently required to submit quarterly reports to the Department and to an independent utilization review organization (IURO), with diagnostic and length of stay information concerning each individual who is admitted to the unit. The proposed amendment does not impose any additional recordkeeping requirements for subacute care units, beyond those that are already required by the existing rules. In fact, the proposed amendment eliminates the duplicative requirement for submission of quarterly reports to the IURO, since these reports are already submitted to the Department. Therefore, there will be no new burden on these facilities. All hospital-based subacute care units, regardless of their size, are required to comply with the recordkeeping requirements in the regulations in order to ensure compliance with N.J.S.A. 26:2H-7.3-7.8, which provide the statutory authority for the establishment and regulation of hospital-based subacute care units in New Jersey.

### **Smart Growth Impact Statement**

The proposed amendments would have no impact on the achievement of smart growth or implementation of the State Development and Redevelopment Plan.

**Full text** of the proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### 8:39-47.4 Licensure requirements

(a)-(c) (No change.)

(d) The hospital-based subacute care unit shall develop written utilization review protocols in accordance with the following:

1. (No change.)
2. (No change.)
3. (No change.)
4. (No change.)
5. Utilization review staff shall retrospectively examine diagnostic and length of stay information concerning each admission.

Such information shall be reported to the Department [ ,and to an independent utilization review organization (IURO), ] quarterly on a form and in a manner prescribed by the Department. The \$35.00 per admission health care quality fee prescribed by P.L. 1996, c.102, shall accompany submission of the form to the Department. Such form shall be submitted to the Department within 30 days after the conclusion of each quarter.

[i. An IURO which has been approved by the Department shall review a representative sample of all admissions to the hospital-based subacute care unit in order to verify the accuracy of the quarterly reports regarding length of stay.

- ii. The hospital shall be responsible for the cost of the services provided by the IURO. ]

#### 8:39-47.5 Licensure renewal

(a) (No change.)

[(b) The findings of the IURO which verified the accuracy of the hospital-based subacute unit's quarterly utilization reports shall be submitted to the Department prior to, or as part of, the application for licensure renewal. The findings of the IURO shall include at least verification of individual length of stay for a representative patient sample, determination of aggregate length of stay for a representative patient sample, and specification of sample size for each quarter. ]

[(c)] **(b)** (No change in text.)